

**APPLICANTS:**  
**Robert & Amy Axel**

**REQUEST: A variance pursuant to  
Section 267-24B(1) of the Harford County  
Code to allow an existing 5 foot fence within  
the front yard**

**HEARING DATE: October 13, 2004**

**BEFORE THE  
ZONING HEARING EXAMINER  
FOR HARFORD COUNTY  
BOARD OF APPEALS  
Case No. 5443**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Robert & Amy Axel

**LOCATION:** 345 Enfield Road, Joppa Crossing subdivision, Joppa  
Tax Map: 64 / Grid: 3F / Parcel: 162 / Lot: 12  
First Election District

**ZONING:** R3 / Urban Residential

**REQUEST:** A variance pursuant to Section 267-24B(1) of the Harford County  
Code to allow an existing 5 foot fence within the front yard in an  
R3 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The Applicants are requesting a variance to allow a 5 foot high fence, consisting of a 4 feet high board-on-board fence with an additional 1 foot lattice-weave on top. The variance is requested because a 5 foot high fence is not allowed as of right in a front yard setback. The house is located on a corner lot and is actually impacted by two front yard setbacks. The fence encroaches completely within the 25 foot setback along Stone Court, having been built out to the sidewalk.

The Applicant testified that the fence has received approval from the Community Association. The fence does not block the view of any neighbors, and does not create a visibility problem to users of Stone Court and Enfield Road.<sup>1</sup>

The Applicants stated that their contractor had obtained a permit to construct the fence and, to the Applicant's knowledge, had constructed the fence according to the fence permit. However, only after the fence was constructed did the Applicants first learn that the permit allowed only a 4 foot fence, not a 5 foot fence.

---

<sup>1</sup> A 4 foot fence within the front yard setback is allowed as a matter of right. The Applicants need a variance for the additional 1 foot in height.

## **Case No. 5443 – Robert & Amy Axel**

Upon questioning their contractor, the Applicants were told that the fence was really only 4 feet high, with a 1 foot header; however, the Department of Planning and Zoning's position is that the 1 foot lattice work at the top of the fence is actually considered part of the fence itself, which is not allowed without a variance.

The Applicants testified, accordingly, that they did not know they were in violation. The Applicants want a 5 foot fence because of the topography of their backyard. The backyard slopes down and away from the back of their house. Photographs in the file, marked as Attachment 8 to the Staff Report, show a fairly significant slope from the house down to the rear and down toward Stone Court. Furthermore, the Applicants have constructed a swimming pool within the backyard and on this slope. The Applicants, as a result, believe that for safety purposes, and also in an attempt to visually screen the swimming pool, a 5 foot fence is necessary.

The Applicants have spoken to all of their neighbors, many of whom have submitted letters indicating their lack of opposition and their support for the fence. The Applicants testified that all of their neighbors are very supportive. The Applicants stated that many residents in the neighborhood also have fences greater than 4 feet in height.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune gave the Department's position that the Applicants' property is unique. The property slopes down radically from the house to the rear, and also to Stone Court. Mr. McClune said this is an unusual topographical characteristic.

Mr. McClune believes the fence provides privacy and necessary security. The swimming pool would be greatly exposed without the fence. Because of the slope and the topography, the fence proposed by the Applicant is most appropriate.

Mr. McClune testified that the fence presents no visibility problems for motorists using either Enfield Road or Stone Court, and presents no impairment to vehicles entering or exiting the driveway to the rear of the subject property. According to Mr. McClune, only that portion of the fence which is in the front yard along Stone Court requires a variance.

No testimony or evidence was received in opposition.

### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

## **Case No. 5443 – Robert & Amy Axel**

*“Variances.*

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

The Applicants are requesting a variance to Section 267-24B which states:

- “(1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground level. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”*

## **Case No. 5443 – Robert & Amy Axel**

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicants' property is unique in that it is a corner lot which, under Harford County zoning regulations, is considered to have two front yards. Unfortunately, the fence which the Applicants constructed in order to help provide visual screening and a reasonable impediment to children entering their back pool area without permission, encroaches upon the front yard along Stone Court. To a casual observer, the Stone Court side of the Applicants' property would actually be a side yard as the house fronts Enfield Road. Nevertheless, this would not present a problem if it were not for the one additional foot of lattice work provided on top of the 4 foot board on board fence. The resulting section of the 5 foot fence which is located within the front yard setback along Stone Court accordingly violates applicable setback regulations.

The photographs contained in the file, which are noted as Attachment 8 to the Staff Report, amply demonstrate the site constraints which face the Applicants in the construction and use of their pool and fence. The backyard slopes very radically down to the back line and also to the lot line along Stone Court. Within that sloping yard a pool has been constructed. The pool is not in violation; however, it is extremely open to the view of passersby, and is obviously an inviting and attractive feature to children. In order to help provide screening for privacy and discourage children and others from entering the backyard, the Applicants constructed the fence for which the variance has been requested.

It is, accordingly, found that the property, for the above reasons, is unique. The topography to the backyard and its openness to passersby, the existence of two front yards, along with the attractiveness to children of the swimming pool, combine to justify a finding of uniqueness. The resulting hardship is the Applicants' inability to appropriately screen their pool without the variance.

It is further found that a variance which allows a one (1) additional foot to the top of the fence would present no adverse impact to the neighborhood and would, clearly, benefit, not harm, the neighborhood by providing additional security to the Applicants' pool area.

### **CONCLUSION:**

It is accordingly recommended that the requested variance be granted, subject to the condition that the Applicants obtain all necessary permits and inspections.

Date: November 24, 2004

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner